

MONTANA LEGISLATIVE HISTORY

Chapter 123 19 81

Bill H _____ S 29 Original bill & history ☒ C

H. Committee on Judiciary

Hearing Date(s) mar 03 ☒ C

? Mar 04 _____ C

_____ C

_____ C

Date Out mar 03 ☒ C

S. Committee on Judiciary

Hearing Date(s) Feb 12 ☒ C

Feb 14 ☒ C

_____ C

_____ C

Feb 14 ☒ C

Did this bill originate in an interim committee? ____ Yes ____ No

Committee _____

Report _____

SENATE BILL NO. 29
INTRODUCED BY HAGER

IN THE SENATE

January 5, 1981	Introduced and referred to Committee on Judiciary.
February 16, 1981	Committee recommend bill do pass as amended. Report adopted.
February 17, 1981	Bill printed and placed on members' desks.
February 18, 1981	Second reading, do pass.
February 19, 1981	Correctly engrossed.
February 20, 1981	Third reading, passed. Ayes, 48; Noes, 0. Transmitted to House.

IN THE HOUSE

February 21, 1981	Introduced and referred to Committee on Judiciary.
March 4, 1981	Committee recommend bill be concurred in as amended. Report adopted.
March 5, 1981	Motion pass consideration.
March 6, 1981	Second reading, concurred in.
March 10, 1981	Third reading, concurred in. Ayes, 85; Noes, 11.

IN THE SENATE

March 11, 1981

Returned from House.
Concurred in as amended.

March 13, 1981

Second reading, concurred in
as amended.

March 14, 1981

Third reading, concurred in
as amended. Ayes, 47; Noes, 0.
Sent to enrolling.

Reported correctly enrolled.

1 SENATE BILL NO. 29
2 INTRODUCED BY HAGER
3
4 A BILL FOR AN ACT ENTITLED: "AN ACT TO PROHIBIT PERSONS WHO
5 ESTABLISH RESIDENCE NEAR AGRICULTURAL OR FARMING OPERATIONS,
6 PLACES, ESTABLISHMENTS, OR FACILITIES THAT HAVE EXISTED FOR
7 1 YEAR OR MORE FROM BRINGING NUISANCE SUITS BASED ON
8 OBJECTION TO THE NORMAL ODOORS FROM THE MAINTENANCE OF
9 LIVESTOCK OR THE SPREADING OF MANURE; AMENDING SECTIONS
10 27-30-101 AND 45-8-111, MCA."
11
12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
13 Section 1. Section 27-30-101, MCA, is amended to read:
14 "27-30-101. Definition of nuisance. (1) Anything which
15 is injurious to health, indecent or offensive to the senses,
16 or an obstruction to the free use of property, so as to
17 interfere with the comfortable enjoyment of life or
18 property, or which unlawfully obstructs the free passage or
19 use, in the customary manner, of any navigable lake, river,
20 bay, stream, canal, or basin or any public park, square,
21 street, or highway is a nuisance.
22 (2) Nothing which is done or maintained under the
23 express authority of a statute can be deemed a nuisance.
24 (3) No agricultural or farming operations, places,
25 establishment, or facility or any of its appurtenances or

1 the operation thereof is or becomes a public or private
2 nuisance because of the normal odors from the maintenance of
3 livestock or the spreading of manure as a result of changed
4 residential conditions in or around its locality if the
5 agricultural or farming operation, place, establishment, or
6 facility has been in operation for 1 year or more."
7 Section 2. Section 45-8-111, MCA, is amended to read:
8 "45-8-111. Public nuisance. (1) "Public nuisance"
9 means:
10 (a) a condition which endangers safety or health, is
11 offensive to the senses, or obstructs the free use of
12 property so as to interfere with the comfortable enjoyment
13 of life or property by an entire community or neighborhood
14 or by any considerable number of persons;
15 (b) any premises where persons gather for the purpose
16 of engaging in unlawful conduct; or
17 (c) a condition which renders dangerous for passage any
18 public highway or right-of-way or waters used by the public.
19 (2) A person commits the offense of maintaining a
20 public nuisance if he knowingly creates, conducts, or
21 maintains a public nuisance.
22 (3) Any act which affects an entire community or
23 neighborhood or any considerable number of persons (as
24 specified in subsection (1)(a)) is no less a nuisance
25 because the extent of the annoyance or damage inflicted upon

-2- INTRODUCED BILL

SB29

1 individuals is unequal.

2 ~~(4) No agricultural or farming operation, place,~~
3 ~~establishment, or facility or any of its appurtenances or~~
4 ~~the operation thereof is or becomes a public nuisance~~
5 ~~because of the normal odors from the maintenance of~~
6 ~~livestock or the spreading of manure as a result of changed~~
7 ~~residential conditions in or around its locality if the~~
8 ~~agricultural or farming operation, place, establishment, or~~
9 ~~facility has been in operation for 1 year or more.~~

10 ~~(4)(5)~~ A person convicted of maintaining a public
11 nuisance shall be fined not to exceed \$500 or imprisoned in
12 the county jail for a term not to exceed 6 months, or both.
13 Each day of such conduct constitutes a separate offense."

-End-

MINUTES OF MEETING
SENATE JUDICIARY COMMITTEE
February 12, 1981

The twenty-sixth meeting of the Senate Judiciary Committee was called to order by Mike Anderson, Chairman, on the above date in Room 331, at 10:00 a.m.

ROLL CALL:

All members were present.

CONSIDERATION OF SENATE BILL 268:

TAXING THE COSTS OF IMPANELING A JURY
AGAINST PARTIES WHO FAIL TO INFORM THE
COURT OF A SETTLEMENT.

Senator Graham, District 29, Lodge Grass, introduced the bill as a result of many conversations he has had with clerks of the district court. He outlined the problem leading to this bill as being that of settlements reached orally by the attorneys for the principal parties in an action, who have then failed to notify the court of such a settlement in time to avoid calling a jury. This results in unnecessary expenses.

FURTHER CONSIDERATION OF HOUSE BILL 10:

Jim Lear, attorney with the Legislative Council, presented Rep. Keedy's additional information on the revised fiscal note. This information is contained on the attached Exhibit A.

CONSIDERATION OF SENATE BILL 287:

PROVIDING FOR DISPOSITION OF ABANDONED
REAL PROPERTY INTERESTS ACQUIRED FOR A
PUBLIC USE.

Senator Manley, District 14, Drummond, presented the bill, and described its purpose as being the solution to the problem of landowners who have had rights of way acquired through their land for public use, and then later abandoned. He said that this abandoned property should be returned to the owner of the adjacent land.

John Scully, in telling the strong points of the bill and the areas where he felt it needed work, stated that the bill addresses a very real problem. He told of a branch line in Gallatin County which had been abandoned by the Milwaukee Railroad. When the Milwaukee took over the privately owned

Will Hutchison, representing Montana Department of Highways, opposed the bill for three reasons: (1) no clear designation of interests created and abandoned; (2) unclear designation as to who qualifies for owners of the reversion interests; and (3) various portions of the bill conflict with present law. He ended by saying that it would repeal some of the policies now used by the Highway Department to the advantage of the landowner. He left additional written comments which are marked Exhibit C and attached to these minutes.

DISPOSITION OF SENATE BILL 268:

Senator Crippen moved that the third amendment shown on the attached Committee Report be adopted. His motion passed unanimously. Senator Olson moved that the first and second amendments shown on the attached Committee Report be adopted, and his motion passed unanimously. Senator Mazurek moved that the fourth amendment shown on the attached Committee Report be adopted, and the motion carried unanimously. Then Senator Olson moved that the bill DO PASS AS AMENDED, and his motion passed unanimously.

CONSIDERATION OF SENATE BILL 265:

AMENDING 72-15-301 TO INCREASE THE
COMPENSATION FOR ESTATE PUBLIC
ADMINISTRATIONS.

Senator Hager, District 30, Yellowstone County, presented the bill.

Senator Anderson asked David Niss if this bill would apply only to small estates of \$7,500 or less. David replied that it would apply to any situation where the public administrator is used. Senator Hager said that a public administrator can only handle small estates. Further research on this question will be done by David.

CONSIDERATION OF SENATE BILL 29:

TO PROHIBIT PERSONS WHO ESTABLISH
RESIDENCE NEAR AGRICULTURAL OR FARMING
OPERATIONS, ETC., FROM BRINGING
NUISANCE SUITS.

Senator Hager presented this bill, saying that it is based on legislation recently passed in Massachusetts and Georgia. He said the purpose of the bill is to prevent an animal raiser from being forced out of business because of subsequent development of the surrounding area.

Speaking in support of the bill were Jo Brunner, of Women

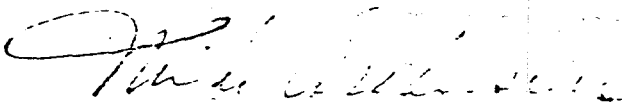
Involved in Farm Economics; Alice Fryslye, representing Montana Cattle Feeders Association, Montana Stockgrowers, National Farmers Organization, and Montana Cowbells, who read a letter from the Montana Cattle Feeders in support of the bill (marked Exhibit D and attached to these minutes); Donald Johannsen, of the National Farmers Organization; Pat Underwood, representing the Montana Farm Bureau; Bill Asher, representing Agricultural Preservation Association, Park County Legislative Association, Sweetgrass County Preservation Association, and Stillwater County Agricultural Legislative Association; and Frank Thompson, representing Montana Association of Conservation Districts.

Senator Hager then presented some proposed amendments (marked Exhibit E and attached to these minutes).

Senator Crippen asked if the intent of the bill was to preclude building motels, shopping centers, and similar projects. Senator Hager replied that the intent is to protect pre-existing farm businesses.

Senator Halligan moved that the amendments listed on attached Exhibit E be adopted. His motion passed unanimously.

Senator Mazurek then stated that he had a concern for the person who might build next to a pre-existing small farm which might suddenly expand into a full-scale feedlot or hog farm. He requested that the committee delay a decision upon the bill until he has worked out an amendment to cover this eventuality.



Senator Anderson
Chairman, Judiciary Committee

NAME Jo Brunner BILL No. Senate 29
ADDRESS Helena DATE 2/12
WHOM DO YOU REPRESENT W.I.F.E.
SUPPORT X OPPOSE AMEND

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

We wish to support Senate Bill 29 in its amended form.

We feel such protection for individuals is long overdue. It addresses the problem of subdivisions and residential areas crowding out an established business.

In truth, we would like to see it include the opposite, a business that is offensive should be prohibited from being established in a rural subdivision or small unincorporated town not covered by zoning laws.

Still we endorse Senate Bill 29 as it is presented and urge your approval.

NAME: Donald Tramm DATE: 2/12/81

ADDRESS: Shelby

PHONE: 443-4914

REPRESENTING WHOM? National Farmers Association

APPEARING ON WHICH PROPOSAL: SB 29

DO YOU: SUPPORT? ☒ ATEND? ☐ OPPOSE? ☐

COMMENTS: We feel that an established business should not be harassed because of an existing condition which is a normal part of that operation. The control of odor is for the most part outside of presently existing technology available to a small business in agricultural operation.

Operators all over the US are being jeopardized by legislation involving continued complaints from people who deliberately moved into close proximity with the facility and now complain of the pre existing noise level. We feel this bill will preclude the same sort of legal problems for agriculture and other such operators.

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY

Exhibit 1

Montana Cattle Feeders, Inc.

P.O. Box 30736

Billings, Montana 59107

Phone 406-962-3248

Ray Gerringa
President

Mike Davey
1st Vice President

Stan Brown
2nd Vice President

Jack Asay
Executive Vice President

Dennis Flick
Secretary/Treasurer

February 10, 1981

Senate Judiciary Committee
Room 331
Montana Capitol

Mr. Chairman and Committee Members:

My name is John Asay. I represent the Montana Cattle-feeders Association. We endorse Senate Bill 29 and strongly urge this committee to grant it an affirmative vote.

This legislation offers justifiable protection for the huge investments of existing rural livestock businesses from the risks imposed by capriciously located later development.

Passage of Senate Bill 29 into law will impose responsible judgement on exploiters of rural property, inject fairness into relative judicial determinations and offer relief from one unpredicatble and unfair risk to an already high-risk agricultural investment.

Thank you for your favorable consideration.

Exhibit

AMENDMENTS FOR SENATE BILL 29

1. Title, line 5.

Following: "RESIDENCE"

Insert: "OR BUSINESSES"

2. Page 2, lines 3 and 4.

Following: "result of"

Strike: "changed residential conditions"

Insert: "the establishment of residences or businesses"

3. Page 3, lines 6 and 7.

Following: "result of"

Strike: "changed residential conditions"

Insert: "the establishment of residences or business"

MINUTES OF MEETING
SENATE JUDICIARY COMMITTEE
February 14, 1981

The twenty-eighth meeting of the Senate Judiciary Committee was called to order by Mike Anderson, Chairman, on the above date in Room 331, at 10:00 a.m.

ROLL CALL:

All members were present.

CONSIDERATION OF SENATE BILL 411:

DELETING THE REQUIREMENT THAT DEPT. OF
HEALTH APPROVE COUNTY SERVICES FOR
MEDICAL AID TO INDIGENTS.

Senator Hims1, District 9, Kalispell, introduced the bill at the request of the Audit Committee. The purpose is to do away with a requirement for approval of medical services that is being ignored by county commissioners.

Chad Smith, speaking for the Montana Hospital Association, spoke in support of the bill.

CONSIDERATION OF SENATE BILL 335:

ADOPTING A NEW DEFINITION OF MARINE,
INLAND MARINE, AND TRANSPORTATION
INSURANCE.

Senator Hazelbaker, District 41, Dillon, introduced the bill at the request of the State Insurance Department. Its purpose is to bring into conformity the definition of certain types of insurance with those in other states.

Josephine Driscoll, Chief Deputy Insurance Commissioner for the State Insurance Department, spoke in support of the bill, saying it would be much more beneficial to the insurance carriers to use the same forms nationwide.

CONSIDERATION OF SENATE BILL 336:

ALLOWING THE BOARD OF PARDONS TO
DELEGATE CERTAIN HEARING FUNCTIONS.

Senator Ryan introduced the bill, stating that its purpose is to grant authority for one member of the Parole Board to conduct the interview prior to parole of prisoners and to

DISPOSITION OF SENATE BILL 112:

Senator Tveit moved to amend the bill on page 1, line 19, following "." by inserting "At any time after receiving a complaint, the commission may notify the parties that it declines further jurisdiction and thereupon the complainant may petition the district court". This motion passed unanimously.

Senator Anderson asked if Senator Tveit would change "may" to "shall" in line 14. Putting it into the form of a motion, it carried five to four with one abstention on a roll call vote.

DISPOSITION OF SENATE BILL 29:

Senator S. Brown moved to amend page 2, line 4, following "residential", by inserting "or commercial"; and on page 3, line 7, following "residential", by inserting "or commercial". These amendments passed unanimously. It was then specified that it was the intent of the author of the bill and the intent of the committee that this language apply to all established farm businesses. Senator S. Brown moved that the bill DO PASS AS AMENDED, and the motion carried unanimously.

DISPOSITION OF SENATE BILL 245:

Senator Mazurek moved to amend the bill on page 5, line 20, by striking "\$5" and inserting "\$3". His motion passed unanimously. Senator S. Brown moved that the bill DO PASS AS AMENDED, and the motion carried unanimously.

DISPOSITION OF SENATE BILL 267:

Senator Mazurek moved to amend the bill as shown on the attached Committee Report. The amendments passed unanimously. He then moved that the bill DO PASS AS AMENDED, and the motion carried with Senator Olson objecting.



STANDING COMMITTEE REPORT

February 14, 1961

MR. PRESIDENT

We, your committee on JUDICIARY

having had under consideration SENATE Bill No. 29

Respectfully report as follows: That SENATE Bill No. 29

be amended as follows:

1. Title, line 5.
Following: "RESIDENCE"
Insert: "OR BUSINESSES"
2. Page 2, line 4.
Following: "residential"
Insert: "or commercial"
3. Page 3, line 7.
Following: "residential"
Insert: "or commercial"

And, as so amended,

DO PASS

B.A.

MINUTES OF THE MEETING OF THE JUDICIARY COMMITTEE
March 3, 1981

The meeting of the House Judiciary Committee was called to order at 8:00 a.m. in Room 437 of the Capitol by Chairman Kerry Keyser. All members were present except Rep. Iverson, who was excused and Rep. Teague, who was absent. Jim Lear, Legislative Council, was present.

SENATE BILL 8 SENATOR VAN VALKENBURG, sponsor of the bill, stated this was to amend 46-18-201 to increase to five years the maximum period for deferred imposition of sentence for a felony. An interim committee on corrections policy and facility needs requested the bill. The maximum period for deferred imposition of sentence has been changed from three years to five years. If maximum deferment is increased there would be instances where judges would use the deferred sentence where they might not otherwise do so.

If theft is a person's first offense, it can be difficult to accomplish restitution of that money in a three year period. It is thought that the opportunity to make restitution will be enhanced. It gives the judge the ability to keep the person under supervision a longer period of time.

The positive incentive is getting a clean record with a deferred sentence.

There were no proponents.

There were no opponents.

SENATOR VAN VALKENBURG closed the bill.

REP. HANNAH asked if 18 year olds are primary applicants. The sponsor replied there is no age limit to the bill.

REP. KEEDY asked about a fiscal note. The Senator replied there is none. If the assumption is made that everyone who had a three year sentence would have a five year sentence that would be a false assumption. The judges do not use the deferred sentence as often as they could. This might help the individual and the community.

SENATE BILL 27 SENATOR S. BROWN, sponsor, stated this is to amend 7-32-2121 to charge the sheriff with the duty of supervising search and rescue operations in the field. It makes sense to have just one person in charge.

CHUCK O'REILLY, Montana Sheriffs & Peace Officers, was in support of the bill. Traditionally the sheriff's department has been in charge of these operations. However, there is nothing in the law that defines the sheriff is actually the one to be in charge. Private groups can come in and charge for their service. When a

There are still some of these deeds that have to be cleared up. The bill is needed to eliminate a really involved legal process. Since the judge will be holding the land in trust there will not be the problem with someone sneaking over to get the land. There is a real problem with some of the entry town site deeds.

There were no further proponents. .

There were no opponents.

REP. YARDLEY asked if a normal title action covers this. HEIMAN replied they tried to work that out and it literally does not. Title insurance companies disagree with that.

REP. KEEDY asked if a claimant can claim a lot smaller than the township site. A lot is smaller. He would have to pick the township land and so possess it and have title to it since 1921. The RCM section provides only two sections. At one time a deed was issued then anybody else there would lose that right. REP. KEEDY asked if that is what we want. HEIMAN replied his job is to recreate the RCM. There are many ways to add to it.

REP. HANNAH asked if the federal law is the same as what is drafted. HEIMAN replied it is the RCM. Federal law has been repealed except in Alaska.

REP. HANNAH asked if the bill is applied will there be conflicting problems. HEIMAN did not think so.

SENATE BILL 29 SENATOR HAGER, sponsor, stated this bill is to prohibit persons who establish residence near agricultural or farming operations from bringing nuisance suits. The bill is introduced after similar legislation in Massachusetts and Georgia. It is not meant as a substitute of good management.

JO BRUNNER supported the bill. EXHIBIT 4.

PAT UNDERWOOD, Montana Farm Bureau, supported the bill. EXHIBIT 5.

RAY BECK, Montana Association Conservation Districts, supported the bill. EXHIBIT 6.

CHRIS JOHANSEN, Montana Farmers Union, supports the bill.

ALICE FRYSLIE, Montana Cattlemen and National Farmers, supports the bill.

JACK CASEY supports the bill.

JOHN ASAY supports the bill. EXHIBIT 7.

There were no further proponents.

Opponent MIKE MELOY, Montana Trial Lawyers Association, felt the bill has some problems. In the Helena valley dairy farms have depleted because of the city moving outward. A bill like this will not solve that problem. It puts into the law a new type of concept. The bill is exempt from nuisance suits and any complaint against the operation of livestock. Are chickens and turkeys livestock? This bill would prevent a person from bringing suit even though he was there first.

There were no further opponents.

In closing, SENATOR HAGER stated the realtors have no problem with the bill. Harassment and threat of these suits makes it difficult to operate this.

REP. YARDLEY asked for the definition of livestock. It was replied cattle, hogs, dairy and poultry are considered livestock.

REP. HANNAH asked if currently nuisance suits can be filed. MELOY responded it has to be clarified. The judge will decide whether the injury is adequate.

REP. HANNAH asked why this was just limited to agriculture activities. Softball fields are a type of nuisance in the summer around residential areas in the evenings. The sponsor replied noise pollution should be addressed in another bill.

REP. CURTISS asked if there was any consideration to qualify this. The sponsor replied if a facility has been in operation one year or more before another activity appeals.

EXECUTIVE SESSION

The House Judiciary Committee went into executive session at 9:45 a.m.

SENATE BILL 8 REP. YARDLEY moved do pass. He felt this would give the judge additional discretion and give him more control. The sentence is still imposed.

REP. HANNAH felt the bill was too broad.

REP. YARDLEY stated the existing law is three years. It would not

REP. SHELDEN made a motion to insert on line 18, page 2 "or volunteer for" after "into". The motion failed.

REP. KEEDY was convinced if this bill is passed the sheriff's office will be burdened with legal liability whenever they have to go out.

The motion of do pass carried with KEEDY, HANNAH, EUDAILY, and MCLANE voting against the motion.

SENATE BILL 36 REP. KEEDY moved do pass.

REP. KEEDY moved to postpone action on the bill until an amendment was drawn up. The motion carried.

SENATE BILL 29 REP. MCLANE moved do pass.

REP. CURTISS moved to amend page 2, line 7 after "more" inserting "before residential subdivision or other commercial development occurs". REP. HUENNEKENS felt subdivision is too restrictive. REP. CURTISS withdrew the motion.

REP. KEEDY moved to strike lines 6 and 7 after operation and to insert "longer than the complaining resident has been in possession or commercial establishment has been in operation". The amendment carried.

REP. KEEDY moved to amend the title and page 2, line 2 after "the" striking the rest of the line and line 3 through "manure" and insert "normal operation thereof".

REP. EUDAILY asked for an example of this. REP. KEEDY replied noise from daily farm operations, spraying, or flies.

The amendment carried.

REP. MCLANE moved do pass as amended.

REP. BENNETT felt the owner of the new place next to the farming operation is not being protected. It is being assumed every farmer will get along well with his neighbor. REP. KEEDY responded the second amendment would help eliminate cases where circumstances arose from abnormal operations.

REP. HANNAH felt this should not be tailored to one specific area. What about rifle ranges, baseball fields and airports? If there is a problem we are not doing our purpose if we don't address the whole problem.

Judiciary Committee

March 3, 1981

Page 7

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Judiciary Committee
March 3, 1981
Page 8

REP. YARDLEY did not feel there was a problem. Not very many local nuisance actions are brought up.

The motion of do pass as amended carried with BENNETT, YARDLEY, HANNAH and SEIFERT voting no.

The meeting adjourned at 11:10 a.m.

Kerry Keyser - Chairman
KERRY KEYSER, CHAIRMAN

mr

NAME Jo Brunner BILL No. SB 29
ADDRESS 531 South Oakes DATE 3/3
WHOM DO YOU REPRESENT Women Involved in Farm Economics
SUPPORT X OPPOSE AMEND
PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

Mr. Speaker, members of the committee, for the record, my name is Jo Brunner and I represent Women Involved in Farm Economics.

We are in support of Senate bill 29. We feel such protection for land owners and business people is long overdue. We have all at one time or another seen what happens to an established business when subdivisions crowd in around them, and find the odors and animals unacceptable. Before long the move is underway to eliminate that nuisance.

This would give the established business or operation the protection it needs.

We would like to see this carried ^a ~~one~~ step further so that offensive unincorporated businesses and operations could not move into small towns and subdivisions and set up work....

We ask that you pass Senate bill 29.

Thank you/

NAME PAT UNDERWOOD Bill No. SB 29
ADDRESS BOX 1207 Bozeman, MT. DATE MAR 3, 1981
WHOM DO YOU REPRESENT MONTANA FARM BUREAU
☒ SUPPORT ☐ OPPOSE ☐ AMEND

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

• Exhibit 5

Comments:

The MONTANA FARM BUREAU has policy which
SUPPORTS THE CONCEPTS PRESENTED IN THIS
BILL. IT IS A GOOD PIECE OF LEGISLATION
THAT IS NEEDED NOW IN MONTANA. WE
URGE A "DO PASS" ON SB 29.



Montana Association Of Conservation Districts

Exhibit 6

7 Edwards
Helena, Montana 59601
Ph. 406-443-5711

SB 29

Studies indicate that an average of about 12 square miles of U.S. farmland each day is being paved over for parking lots and highways, subdivided for houses, factories and shopping centers, flooded to form reservoirs or converted to other uses. That adds up to a loss of 3 million acres a year, 1 million acres of which are considered prime agricultural land.

Senate Bill 29 addresses a problem that is becoming a big concern to many farm and ranch operators in Montana. Although this bill will not be the solution to all the pressures being placed on agricultural units where subdivision encroachment is taking place, it will eliminate the nuisance suit problems which will be a very big benefit.

The Montana Association of Conservation Districts and the Montana Association of State Grazing Districts would like to be shown in the record as in strong support of Senate Bill 29.

Thank you.

RAY BECK
Executive Vice President

NAME John Asay BILL No. SB 29
ADDRESS 800 5th St. DATE 2/3/81
WHOM DO YOU REPRESENT Montana Cattlefeeders Assoc.
SUPPORT X OPPOSE _____ AMEND _____

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

this legislation offers necessary and justifiable protection for the huge investments of existing Rural livestock businesses from the risks imposed by capriciously located later development.

Passage of Senate Bill 29 into law will impose responsible judgement on exploiters of rural property, inject fairness into relative judicial determination and offer relief from one unpredictable and unfair risk to an already high-risk agricultural investment.

We urge this committee to grant an affirmative vote for S.B. 29 and thank you for your favorable consideration.

VISITORS' REGISTER

HOUSE

JUDICIARY

COMMITTEE

SENATE

BILL 29

Date 3/3/81

SPONSOR Hager

[illegible]

IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR LONGER FORM.

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

SENATE BILL NO. 29

INTRODUCED BY HAGER

A BILL FOR AN ACT ENTITLED: "AN ACT TO PROHIBIT PERSONS WHO
ESTABLISH RESIDENCE OR BUSINESSES NEAR EXISTING AGRICULTURAL
OR FARMING OPERATIONS, PLACES, ESTABLISHMENTS, OR FACILITIES
~~THAT HAVE EXISTED FOR 1 YEAR OR MORE~~ FROM BRINGING NUISANCE
SUITS BASED ON OBJECTION TO THE NORMAL ~~ODORS FROM THE~~
~~MAINTENANCE OF LIVESTOCK OR THE SPREADING OF MANURE~~
OPERATION THEREOF; AMENDING SECTIONS 27-30-101 AND 45-8-111,
MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 27-30-101, MCA, is amended to read:

"27-30-101. Definition of nuisance. (1) Anything which
is injurious to health, indecent or offensive to the senses,
or an obstruction to the free use of property, so as to
interfere with the comfortable enjoyment of life or
property, or which unlawfully obstructs the free passage or
use, in the customary manner, of any navigable lake, river,
bay, stream, canal, or basin or any public park, square,
street, or highway is a nuisance.

(2) Nothing which is done or maintained under the
express authority of a statute can be deemed a nuisance.

(3) No agricultural or farming operation, place,

establishment, or facility or any of its appurtenances, or
the operation thereof is or becomes a public or private
nuisance because of the normal odors from the maintenance of
livestock or the spreading of manure OPERATION THEREOF as a
result of changed residential OR COMMERCIAL conditions in or
around its locality if the agricultural or farming
operation, place, establishment, or facility has been in
operation for 1 year or more LONGER THAN THE COMPLAINING
RESIDENT HAS BEEN IN POSSESSION OR COMMERCIAL ESTABLISHMENT
HAS BEEN IN OPERATION."

Section 2. Section 45-8-111, MCA, is amended to read:

"45-8-111. Public nuisance. (1) "Public nuisance"
means:

(a) a condition which endangers safety or health, is
offensive to the senses, or obstructs the free use of
property so as to interfere with the comfortable enjoyment
of life or property by an entire community or neighborhood
or by any considerable number of persons;

(b) any premises where persons gather for the purpose
of engaging in unlawful conduct; or

(c) a condition which renders dangerous for passage
any public highway or right-of-way or waters used by the
public.

(2) A person commits the offense of maintaining a
public nuisance if he knowingly creates, conducts, or

REFERENCE BILL
SB 29

1 maintains a public nuisance.

2 (3) Any act which affects an entire community or
3 neighborhood or any considerable number of persons (as
4 specified in subsection (1)(a)) is no less a nuisance
5 because the extent of the annoyance or damage inflicted upon
6 individuals is unequal.

7 (4) No agricultural or farming operation, place,
8 establishment, or facility or any of its appurtenances or
9 the operation thereof is or becomes a public nuisance
10 because of the normal odors--from--the--maintenance--of
11 livestock--or--the--spreading--of--manure OPERATION THEREOF as a
12 result of changed residential OR COMMERCIAL conditions in or
13 around its locality if the agricultural or farming
14 operation, place, establishment, or facility has been in
15 operation for i-year-or-more LONGER THAN THE COMPLAINING
16 RESIDENT HAS BEEN IN POSSESSION OR COMMERCIAL ESTABLISHMENT
17 HAS BEEN IN OPERATION.

18 {4}(5) A person convicted of maintaining a public
19 nuisance shall be fined not to exceed \$500 or imprisoned in
20 the county jail for a term not to exceed 6 months, or both.
21 Each day of such conduct constitutes a separate offense."

-End-

HOUSE AMENDMENTS TO

Respectfully report as follows: That.....SENATE..... Bill No. 29

BE AMENDED AS FOLLOWS:

1. Title, line 5.
Following: "NEAR"
Insert: "EXISTING"
2. Title, line 7.
Following: line 6
Strike: "THAT HAVE EXISTED FOR 1 YEAR OR MORE"
3. Title, lines 8 and 9.
Following: "NORMAL" on line 8
Strike: through "MANURE" on line 9
Insert: "OPERATION THEREOF"

JUDICIARY COMMITTEE
SENATE BILL 29 - Continued

.....3/3/81..... 19...

4. Page 2, lines 2 and 3.
Following: "normal" on line 2
Strike: through "manure" on line 3
Insert: "operation thereof"
5. Page 2, lines 6 and 7.
Following: "operation" on line 6
Strike: through "more" on line 7
Insert: "longer than the complaining resident has been in possession
or commercial establishment has been in operation"
6. Page 3, lines 7 and 8.
Following: "normal" on line 7
Strike: through "manure" on line 8
Insert: "operation thereof"
7. Page 3, lines 11 and 12.
Following: "operation" on line 11
Strike: through "more" on line 12
Insert: "longer than the complaining resident has been in possession
or commercial establishment has been in operation"

BE CONCURRED IN AS AMENDED

~~XXXXXXXXXXXXXXXXXXXX~~

[Signature]
KERRY REYSEE,

[Signature]
Chairman.